

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Tri-State Christian TV, Inc.)	
)	CSR-5920-M
v.)	
)	
Blytheville TV Cable Company)	
)	
Request for Mandatory Carriage of Television)	
Station WDYR-LPTV, Dyersburg, Tennessee)	

ORDER ON RECONSIDERATION

Adopted: October 3, 2005

Released: October 5, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Tri-State Christian TV, Inc., licensee of low power television (“LPTV”) station WDYR, Dyersburg, Tennessee (“WDYR”) filed the above-captioned complaint against Blytheville TV Cable Company (“Blytheville Cable”) for its failure to carry WDYR on its cable television system serving Blytheville, Arkansas in accordance with the Commission’s must carry rules.¹ In the *Initial Order*² addressing the complaint, we denied WDYR’s complaint. WDYR subsequently filed a petition for reconsideration, which is now before us. Blytheville Cable filed an opposition to the petition for reconsideration, and WDYR submitted a reply to the opposition. WDYR also submitted a supplement, and Blytheville Cable responded with a motion to dismiss the supplement. As explained below, we grant WDYR’s petition in that we direct Blytheville Cable to carry WDYR, but also authorize Blytheville Cable to conduct additional signal strength tests.

II. BACKGROUND

2. Under the Communications Act of 1934, as amended,³ and the Commission’s rules,⁴ a commercial television broadcast station is entitled to assert mandatory carriage or must carry rights on cable television systems located within the station’s market. Must carry status entitles a station to have its broadcast programming carried on a cable system. A station may make a must carry election at specified three year intervals.⁵ In addition, cable television systems are obligated to carry “qualified” low power television stations in certain limited circumstances. One requisite to be a qualified LPTV station is that

¹47 C.F.R. §§76.51–76.64.

²*Tri-State Christian TV, Inc. v. Blytheville TV Cable Company*, 17 FCC Rcd 21413 (2002) (“*Initial Order*”).

³47 U.S.C. §534.

⁴*See supra* n. 1.

⁵47 C.F.R. §76.64(f).

the station must deliver a good quality over-the-air signal to the principal headend of the cable system.⁶ A low power television station, however, unlike a full power station, is not authorized to cure a poor quality signal with additional specialized equipment, such as a new receive antenna, at a cable headend.⁷ Cable operators have the burden of establishing that a television station is not entitled to carriage.⁸

3. The *Initial Order* denied WDYR's complaint solely on the grounds that it was filed late. The *Initial Order* found that Blytheville Cable refused to carry WDYR by letter dated August 30, 2001, and although other letters were subsequently exchanged, this denial triggered the 60 day deadline for WDYR to file a complaint, which the station did not do until June 13, 2002. However, the *Bureau Order* also noted that Blytheville Cable's signal strength tests were faulty, and that WDYR's offer to correct any signal deficiency by providing specialized equipment was not authorized by the Communications Act because it was a LPTV station. The *Initial Order* further stated "We note that WDYR has submitted a new must carry election for the period beginning January 1, 2003."⁹ In other words, WDYR elected must carry for the next three year cycle beginning on that date.

III. DISCUSSION

4. WDYR in its petition for reconsideration claims that the *Initial Order* incorrectly denied its must carry request. In this regard, WDYR contends that Blytheville Cable's signal strength tests were faulty. Moreover, WDYR noted that it conducted its own tests which show that it provides a good quality signal to Blytheville Cable.¹⁰ WDYR further states that it filed a new must carry election with Blytheville Cable in late September, 2002, for the three year must carry cycle beginning January 1, 2003. WDYR explains that "[h]aving made a timely election, it was error for the Bureau to deny WDYR's carriage request on timeliness grounds," and that "[e]ven assuming, *arguendo*, ... that WDYR's initial request for carriage was out of time," the second request was not.¹¹

5. Blytheville Cable in its opposition to WDYR's petition claims that the station submitted no new arguments.¹² Blytheville Cable also explains that it conducted new signal strength tests that again showed that WDYR did not provide a good quality signal. Blytheville Cable further states "[e]ven had WDYR-TV met the standard for a 'good quality' signal, the antenna tower remains unable to take the additional weight of any new reception equipment. Blytheville is willing to conduct such a study in the future, if the Commission so requires."¹³ Finally, Blytheville Cable argues "although the procedural route that the Commission provides to address Tri-State's carriage complaint for the 2003-2005 period is to allow Tri-State to file a new Petition for Special Relief [must carry complaint which was required to be filed by the deadline in late 2002]," Tri-State instead filed a Petition for Reconsideration which was procedurally incorrect.¹⁴

⁶47 U.S.C. §534(c)(1) and (h)(2); 47 C.F.R. §76.55(d) and 76.56(b)(3). See also *Initial Order*, 17 FCC Rcd at 21413.

⁷*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2991 (1993) ("Must Carry Order").

⁸See, e.g., *Franklin Media, Inc. v. Comcast Cable Communications, Inc.*, 19 FCC Rcd 24086, 24087 (2004).

⁹17 FCC Rcd at 21415.

¹⁰Petition for Reconsideration at 1-2.

¹¹*Id.* at 3.

¹²Opposition at 1-4.

¹³*Id.* at 5-6 n.8, Exhibit 1, and Declaration of Tommie Joe Hill.

¹⁴*Id.* at 2, 5-6.

6. WDYR misinterprets our *Initial Order* which denied carriage for the 2000-2003 election period solely because WDYR's complaint was filed late.¹⁵ This decision was correct, and it appears WDYR does not directly contest this holding. The *Initial Order*, though, also noted that WDYR had submitted another must carry election for the election period beginning January 1, 2003.¹⁶ WDYR indicates that the *Initial Order* denied this election.¹⁷ This is incorrect. The *Initial Order* merely noted the existence of this request, that it was pending, and provided guidance regarding several issues raised by WDYR's complaint for the prior must carry cycle "because there is a possibility that these matters may again be presented for our consideration."¹⁸

7. Subsequent to our *Initial Order*, Blytheville Cable provided new signal strength tests in support of its claim that WDYR does not provide a good quality signal to its cable system.¹⁹ However, as occurred regarding Blytheville Cable's prior tests, which the *Initial Order* discussed,²⁰ these tests did not follow generally accepted engineering practices,²¹ and, therefore, are not accepted as proof of signal strength. For example, there was no indication that the test equipment had ever been calibrated. The lack of calibration information calls into question the accuracy of the signal strength measurements, which is the central issue in this must carry proceeding. Further, block diagrams of the reception and signal processing equipment were not provided. Block diagrams are useful in evaluating how tests were conducted and the reliability of test results. Blytheville Cable also asserts that its antenna tower is unable to accept the weight of new reception equipment, which would be necessary to receive WDYR's signal.²² This is a bare allegation, and documentation is necessary to support this claim such as might be provided by a structural engineer.²³

8. WDYR also submitted signal strength tests, which the station states confirm that it provides a good quality signal.²⁴ These tests, however, likewise did not comply with generally accepted engineering practices.²⁵ For example, there is no indication that the tests were conducted by a qualified technician, a hand held antenna was used, the tests were not performed at the cable headend, and the proper number of measurements were not taken.

9. Cable operators have the burden of establishing that a television station does not meet the requirements for must carry status.²⁶ Twice Blytheville Cable has submitted signal strength tests, which did not adhere to accepted engineering practices. Thus, Blytheville Cable has failed to meet this burden. Blytheville Cable is directed to commence carriage of WDYR within 45 days of the release date of this

¹⁵ 17 FCC Rcd at 21415.

¹⁶ *Id.*

¹⁷ Petition for Reconsideration at 3.

¹⁸ 17 FCC Rcd at 21415.

¹⁹ *See supra* n. 13.

²⁰ 17 FCC Rcd at 21415.

²¹ *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6736 (1994); *Must Carry Order*, 8 FCC Rcd 2965, 2990-1 (1993); 47 C.F.R. §76.61(a)(2).

²² Opposition at Exhibit 1, Declaration of Tommie Joe Hill.

²³ *Cf.*, *Alma College*, 18 FCC Rcd 21027, 21028 (2003); *62 Broadcasting*, 3 FCC Rcd 4429, 4441 and 4443 (1988).

²⁴ Supplement at 2 and Attachment.

²⁵ *See supra* n. 21.

²⁶ *See supra* n. 8.

order, unless Blytheville Cable conducts within 30 days of the release date of this order, new signal quality tests at the principal headend of its cable system, and these tests demonstrate that WDYR does not meet the signal strength standards.²⁷ If Blytheville Cable believes that it is not obligated to carry WDYR based on the results of new tests, it may submit the results of the tests to the Commission's Media Bureau within 30 days of the release date of this order.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534(d)(3), that the petition for reconsideration regarding its must carry request for the 2003-5 cycle filed by Tri-State Christian TV, Inc., licensee of low power television broadcast station WDYR, Dyersburg, Tennessee, against Blytheville TV Cable Company **IS GRANTED** as conditioned herein.

11. **IT IS FURTHER ORDERED** that Blytheville Cable may conduct new signal strength tests consistent with sound engineering practices at the principal headend of its cable system. If based on these tests, Blytheville Cable believes that it is not obligated to carry WDYR on its cable system, it may submit the results of the tests to the Media Bureau within 30 days of the release date of this order.

12. **IT IS FURTHER ORDERED** that Blytheville TV Cable Company shall commence carriage of WDYR within 45 days after the release date of this order in the absence of new tests that demonstrate that WDYR does not provide an adequate signal. WDYR shall be carried on the channel of the cable system specified by Section 76.57 of the Commission's rules, 47 C.F.R. §76.57.

13. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

²⁷47 C.F.R. §76.55(d).